LOS ANGELES BAR BULLETIN

In This Issue

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Los Angeles
BAR BULLETIN

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VOL. 33 JUNE, 1958 No. 8

The President's Page

Expediting of the Judicial Process is a Problem for Lawyers as Well as the Courts

E. Avery Crary

The expediting of bringing cases to trial has been for some time a subject of discussion among the members of the Judiciary, the Bar, legislators and citizens throughout the country. We are fortunate that the situation is less of a problem in Los Angeles than in other large centers of population.

One of the basic difficulties in the taking of positive steps to effect relief is largely due, in the opinion of the writer, to the fact there is insufficient unity of thought as to the means which should be adopted to cure undue delay in trial in areas where that condition exists. Suggestions for alleviation run from more judges, to the elimination of the jury system in personal injury cases and the creation of a Commission for the hearing of these cases, with procedure comparable to that of the Industrial Accident Commission in the field of workmen's compensation.

Many of the suggestions, with the exception of vesting jurisdiction in a Commission, may have merit. Every lawyer knows that

justice is not something that can be cranked out like sausages. The result obtained is more important than the time involved in its production. We know from experience that the problem is not so simple as to be solved by dividing the population of any given area by 40,000 or comparable number and then demanding that the legislature provide a sufficient number of judges to equal the quotient. There are practical limitations beyond which the legislative bodies will not go, regardless of how we of the legal profession may feel with respect to the matter.

I believe that nearly all of the members of our profession will concur on the proposition that the backlog of cases awaiting trial is not due to dilatory conduct on the part of our Judiciary, and that as a matter of fact in negligence cases involving substantial injuries, neither side wants to go to trial within a short time after the case is at issue. The judge in this county who doesn't put in a full day on the Bench, as well as carry home some problems in his thoughts or in his brief case is a rare exception. One of the local newspapers made a check of 91 departments of our Superior Court on the Thursday afternoon before Decoration Day, and in only 2 cases were judges not present. This fact should have been as newsworthy to the public as the unfair criticism that has been leveled at our courts in recent months, but I don't believe it has been published.

Some of the suggested relief measures which have been urged are:

1) Questioning of the jury on Voir Dire by the court with the right of counsel to submit questions to the court in writing;
2) Reduction of the number of jurors to 8;
3) Determination of liability before damages;

4) Consolidation of Superior and Municipal Courts;

5) Additional judges;

6) Discretion in the Superior Court pre-trial judge to transfer personal injury cases to Municipal Court if thought to be within the jurisdictional limits of that court (New Jersey plan);

7) Increasing the jurisdictional limit of the Municipal Court.

Presiding Judge Burke of our Superior Court, on his own initiative, has recently designated a panel of ten "non-jury judges" to expedite the trials of personal injury cases if jury be waived. This plan has been operating with outstanding success. In the first 30 days of operation, jury was waived by stipulation in 41 cases in consideration of assignment for trial to any judge on the panel. Six of these were settled before trial started and 35 were actually tried. The estimated time saved was 75 trial days, or 3½ months of the time of one trial department. These jury waivers were in addition to routine waivers in cases not assigned to the panel.

Problems are a part of the routine of lawyers' work. We, together with the Judiciary, are closer to this one than any other segment of our citizenry. Are we of the legal profession making sufficient effort to create a program which we can present to the legislature as one which we are satisfied will expedite the judicial process without dispensing with any of the elements of a just disposition of matters involved? It is a situation which demands our attention if we are to avoid the adoption of measures advocated by others which may result in the speeding of trials without the safeguards required for fair and proper results. Some of our differences of opinion will have to be compromised, but here again is a field in which the members of our profession excel in obtaining good results.

Please give your Board of Trustees the benefit of your considered opinion as to the steps you believe it would be appropriate and practical to take in the circumstances, including any thoughts you may have which have not been voiced on the subject.

Freedom's Survival in a Divided World

By CHARLES S. RHYNE
President, American Bar Association

(Concluded from the May issue)

Charles S. Rhyne*

We have government officials who are supposed to fight Communist propaganda. But in our Country we never assume such officials are either all-wise or all-sufficient. We constantly help them by criticism, constructive and otherwise. These officials are guided and sometimes governed by public opinion and reaction. What we need is an informed public in this new area of battle. Citizen-soldiers have manned the ranks of our armies to win wars in the past. Here we have a new kind of war and "citizen-soldiers" are just as needed in the ranks of a new type of army as they were in the hot wars of old. We are going to be just as extinguished whether we "freeze" or "burn." The "mutual terror" standoff may prevent our burning, but the attempt to freeze us is largely unrecognized as such and not sufficiently defended against. Here there is a "citizen-soldier" job for us lawyers. Let's get on with the task.

Having thus illustrated the lawyer's function in the tremendously important war of words, I would now like to stress a new idea which could give us an affirmative propaganda victory for our side. Most modern football coaches will tell you that the best defense is a good offense. In this battle for man's mind we must get on the offensive, and stay there, rather than constantly carry out defensive maneuvers.

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*Charles S. Rhyne, President of the American Bar Association, addressing the annual dinner of "Legion Lex" (Univ. of Southern California School of Law support group), at the California Club, Los Angeles, on April 16th. The accompanying article is the address given by President Rhyne on that occasion.

"LAW DAY — U.S.A."

The new idea is "Law Day—U.S.A.," proclaimed as May 1, 1958, by President Eisenhower. We in our country have often honored great men, and women, and even groups of men. But on May 1st this year we will honor not a man, or group of men, but an idea and ideal for all men—the idea of supremacy of the law. This is an idea which has transferred sovereignty in our Country from ruler to the ruled. This idea constitutes the great ideal we offer to all peoples as both the key to individual freedom and the best path to the achievement and maintenance of a peaceful World.

For our people May 1st has always been only an occasion for the celebration of the arrival of fine weather, or the crowning of a May Queen. But in recent years it has been appropriated by the leaders of the international Communist conspiracy to celebrate their conquests and achievements with a show of armed might in Red Square and vainglorious speeches.

This year we in America on May 1st will not just publicize the antics of the Kremlin. Instead, we will affirmatively publicize the most essential ingredient of *our* way of life—the rule of law.

In the outer space satellite competition the Communists can make boastful claims. They can do likewise with respect to atom and hydrogen bombs and missiles. But they dare not even suggest individual human freedom.

In putting his finger on human freedom as the ideal we offer to the World, President Eisenhower in his Proclamation of "Law Day—U.S.A." has flung out as a challenge an achievement of our system of government to which the Communists have no answer. If the Communists meet our President's challenge and offer the people behind the Iron Curtain individual human rights and freedoms, that freedom will destroy the basic principles of Communism.

When we talk about justice under the rule of law on May 1st, its absence behind the Iron Curtain will be apparent to all. When we talk about freedom under law, Hungary will be forcefully recalled in the minds of men. And when we talk about peace under law—peace without the bloodbath of war—we will be appealing to the foremost yearnings of all peoples everywhere.

To me the ultimate weapon—the decisive weapon—in the cold war fight for the minds of men is a convincing presentation of what individual freedom under law really offers to mankind. Our

Country constitutes the greatest example of that freedom and its meaning. But we have never yet used or expressed that concept of human freedom in a clear vision which all men can comprehend. As the cold war grows hotter with the "hot" weapons stalemate, we must step up our propaganda of truth with individual freedom under law as the ideal we offer for mankind's salvation. "Law Day —U.S.A." can throw the spotlight of the world upon us and that concept, and the rule of law is always its own "best evidence" of its priceless value.

But "Law Day—U.S.A." was not conceived as just an offensive propaganda program to throw at the Communists. It is that, but it is also much more indeed. It was purposely designed to strengthen the rule of law at home so as to strengthen our case for the rule of law as the decisive mechanism in resolving disputes between nations. The need for law in the World community is the greatest gap in the legal structure of civilization. And this gap must be filled, and filled quickly, so as to further peaceful settlement of disputes between nations before the devastation of atomic-space war explodes upon mankind.

GUARD OUR HERITAGE — EISENHOWER

President Eisenhower in his Proclamation called upon Americans to "remember with pride and vigilantly guard the great heritage of liberty, justice and equality under law which our forefathers bequeathed to us." On "Law Day—U.S.A." let us forcefully remind our people that even in our own Country that heritage can be lost. Freedom belongs to the vigilant and diligent. Liberties do not come easily, nor are they easily kept or maintained. Governmental forces in our own Country thrive on power over the individual. There is a ceaseless struggle between the two. Our heritage of rights did not come easily. They are an expression of the results of experience in a ceaseless struggle against oppressive governments, from which the framers of our Constitution sought guaranteed protection. We cannot afford to be complacent and relax now that we have liberties and freedoms, or we will wake up some day and find that they are gone.

"Law Day—U.S.A." has as a major purpose reawakening our people to what liberty under law means and the re-creation of admiration and respect among our people for those principles to which we owe our freedom. And "reawaken" and "re-creation" are used advisedly.

Recent highly publicized surveys indicate that our young people know little and care less about our great constitutional liberties. "Law Day—U.S.A." can help get at and reverse this malady of complacent ignorance and its resulting disrespect for these fundamentals and freedoms which have made our Nation the greatest on earth. We must face up to the fact that disrespect for the law is the cause of many of the maladies of our own Country. Examples are juvenile delinquency and the traffic slaughter on the highways. Wars of weapons between nations result from both a lack of and disrespect for law. "Law Day—U.S.A." must inculcate increased respect for law at home and abroad thus helping to cure these maladies.

From its inception to the present zenith of its power our Nation's government under law has been largely created, operated and maintained by lawyers. We know more about the greatness of that system than any other group of men. Let us use all of our talents of presentation and persuasion to make our people realize the great debt they owe to the rule of law on "Law Day—U.S.A." By doing so we will render a great service to our people and through them to the World.

Never in all history has any joint effort of the organized bar exceeded that which will take place on "Law Day—U.S.A." Lawyers, judges and law teachers have joined forces to offer the 28,000 high schools, colleges, clubs and civic associations, speakers to talk on law and what it has meant and can mean to America. These programs are being planned with an enthusiasm unparalleled and unsurpassed in all bar organization history.

The American Bar Association has served as a central information clearinghouse to channel information, ideas and experience to the 1400 state and local bar associations. State bar associations have assumed responsibilty for those things that must be done on a state-wide basis. Local bar associations are doing the work that is appropriate on a local level.

Governors and mayors have released proclamations stressing the great significance of "Law Day—U.S.A." Senators, congressmen and other public officials have added endorsements and laudatory comments. More than 50 lay organizations are cooperating in making "Law Day—U.S.A." the most meaningful day in legal history. Newspaper stories, editorials, magazine articles, radio and TV coverage of speakers and public service "spot" announcements are

all helping to insure that maximum public attention will focus on the idea and ideals of "Law Day—U.S.A."

Witnessing this tremendous outpouring of effort and accomplishment on such a worthwhile project has been a most thrilling experience. Certain it is that this day will be an historic occasion of which lawyers and laymen can both be proud.

The rule of law has been the bulwark of our democracy. It has afforded protection to the weak, the oppressed, the minorities, the unpopular; it has made it possible to achieve responsiveness of the government to the will of the people. It stands as the antithesis of Communism and dictatorship. Let all who believe in our system of government under law stand up and be counted in honoring it on May 1. Let us make known our belief in some meaningful way on this the first nation-wide tribute to the rule of law in America. In the immortal words of Daniel Webster: "The Law: It has honored us. May we honor it."

If "Law Day—U.S.A." strengthens our freedoms at home by reawakening and rededicating our people to the great principles of individual liberty under law to which we owe the greatness of our Nation, and at the same time provides a public awareness of the great virtues of the rule of law as a route to peace between nations, then indeed will our fight for the minds of men be moving toward victory—the kind of victory which all peoples everywhere should applaud and approve as the "breakthrough" for the peaceful world which mankind has sought since the dawn of history.

The program for "Law Day—U.S.A." proves that lawyers can man the ramparts and carry a vital message to our people on a nationwide basis. Such an effort is in keeping with our profession's great tradition of public service. Let us not just render that service for a day or a week or a month, but let us do it on a constant and continuing basis by meeting the constant propaganda crisis of our day. In this way we provide leadership to help defeat the propaganda peril to our way of life, and lead in constructive programs for a better tomorrow. We can thereby help create a future wherein the rule of law will grow ever stronger here at home as well as in relations between nations. No greater public service can be performed, for in this way we lawyers will have lived up to our highest duty: That of insuring freedom's survival in a divided world.

Protection of the Bankrupt Against State Court Action

By GEORGE M. TREISTER*

Over eleven hundred bankruptcies were filed in Southern California in the month of April, 1958, for the most part by wage earners and small businessmen. It is a safe guess that in many of these cases, resort to bankruptcy was compelled by the pressure put upon the debtor through collection suits with the accompanying attachments and garnishments. It is also a safe guess, based on general experience, that after filing their petitions, the bankrupts frequently failed to do anything further about the suits which remained pending against them in the state courts. While they often get away with this loose practice because of the tendency of many creditors to write off the account upon receipt of a notice of bankruptcy, there is a substantial risk involved which should not be overlooked. Where the debtor has legal counsel, there is little justification for trusting to luck when the means exist for assuring the client's protection.

Contrary to what seems to be a popular belief, bankruptcy does *not* act as an automatic stay of state court proceedings. See, e.g., *Hill* v. *Harding*, 107 U.S. 631 (1883). Moreover, the plea of discharge in bankruptcy, like other affirmative defenses, must be specially asserted or else it is deemed waived. E.g., *Luse* v. *Peters*, 219 Cal. 625 (1933); *Tuttle v. Scott*, 119 Cal. 586 (1898); *Maryland Casualty Co. v. Lipscomb*, 40 Cal. App. 2d 171 (1940). If the debtor sleeps on his rights and allows a judgment to be taken against him after bankruptcy, it will be good even though the debt upon which it is founded normally would have been dischargeable. See, e.g., *Tuttle* v. *Scott, supra*. At the expiration of the six month period for setting aside judgments on grounds of mistake, inadvertence, surprise or excusable neglect under Section 473 of the Code of Civil Procedure, there may be no way to avoid the unhappy consequences. Compare *Pratt* v. *Fields*, 21 Cal. App. 2d 723 (1937) with *Jackson v. Shaw*, 20 Cal. App. 2d 740 (1937).[1]

* Member of Quittner, Stutman & Treister; member of the Los Angeles Bar Association

[1]Section 675b of the Code of Civil Procedure provides a method for cancelling judgments which may be useful to the bankrupt under certain circumstances. This section, however, cannot be invoked until one year after the discharge in bankruptcy has been entered. Moreover, if the principle of such cases as *Luse* v. *Peters* and *Tuttle* v. *Scott*, cited in the text above, is followed, Section 675b should be of no help to a bankrupt who has waived the defense of the discharge by failing to plead it. Yet, one decision by the Appellate Department of the Superior Court in San Diego, *Arganbright* v. *Seiveno*, 41 Cal. App. 2d 959 (1940), interprets Section 675b in an extremely broad manner and would enable the debtor to obtain relief despite waiver of the defense of discharge.

To be sure, the *Pratt* and *Jackson* cases, *supra*, establish that if the judgment is entered after bankruptcy but before the order of discharge, the debtor can assert the discharge on a motion to recall or quash the writ of execution, despite the fact that too much time has expired under Section 473. Under the *Jackson* holding, the judgment remains valid, even though it cannot be enforced by execution. The Court in the *Pratt* decision, on the other hand, not only quashed the execution but also cancelled the judgment.

In any event, both of the cases indicate that if the plaintiff waits until after entry of the discharge to take his judgment, execution will issue to enforce it. Cagey creditors, particularly certain collection agencies, have been known to play their cards in this way, thus depriving a debtor of the benefits to which he otherwise would have been entitled under the Bankruptcy Act. What, then, should be done to protect the bankrupt?

At the outset it must be remembered that the question of whether a particular claim is discharged by the bankruptcy usually is not determined by the Bankruptcy Court but by a non-bankruptcy forum, most often by a state court.[2] The form of the Bankruptcy Court's order is merely that the debtor is "discharged from all debts and claims which are made provable by said [Bankruptcy] Act against his estate, except such debts as are, by said Act, excepted from the operation of a discharge in bankruptcy."[3] Although the Bankruptcy Court itself has the basic jurisdiction to decide the dischargeability of a given debt, this power will rarely be exercised except under "unusual circumstances." *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934). The bankrupt's first problem, therefore, is to hold off any creditors who have filed suit long enough for the Bankruptcy Court to grant the discharge, so that it can be pleaded by way of answer to the plaintiff's claim. In most proceedings, entry of the discharge occurs about six weeks or so after the filing of the petition;[4] but in complicated cases, those in which the filing fee is not prepaid, and the ones where some interested party objects to the discharge, much more time may elapse.

Section 11a of the Bankruptcy Act provides in effect that *in per-*

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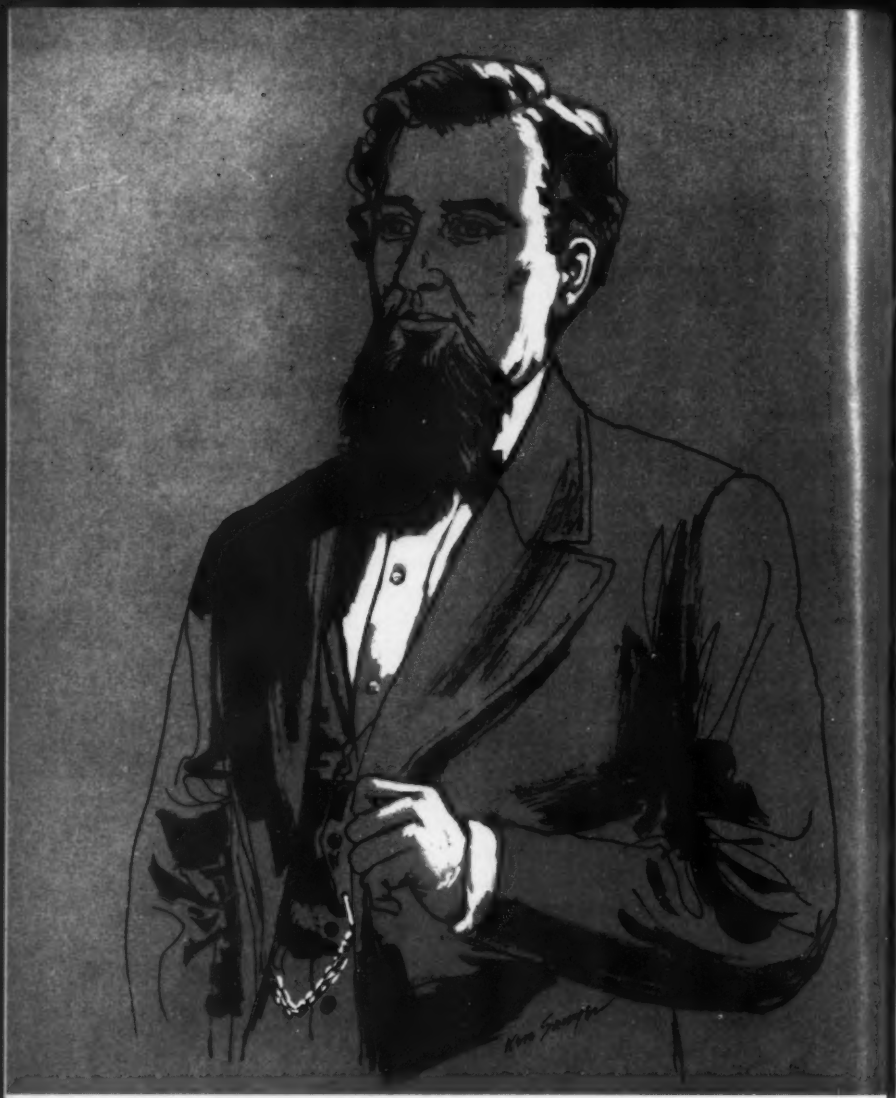
[2]The distinction between the discharge itself and the dischargeability of any particular claim must be kept in mind. The Bankruptcy Court has exclusive jurisdiction to determine the bankrupt's right to a discharge, and this is governed by Section 14 of the Bankruptcy Act. The effect of the discharge upon given debts, however, is usually determined by a non-bankruptcy court, and here Section 17 of the Bankruptcy Act governs.

[3]Official Bankruptcy Forms, prescribed by the United States Supreme Court, Form No. 45.

[4]Creditors are entitled to at least 30 days notice of the last day on which they may object to the bankrupt's discharge. Bankruptcy Act, Sec. 58b.



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sonam suits pending against the debtor when bankruptcy is filed may be stayed until the right to the discharge has been determined.[5] The term "suits" includes not only the action to establish the debtor's personal liability, but also supplementary proceedings in aid of judgment and execution levy to enforce it.[6] As seen above, Section 11a is not self-executing; the bankrupt must take affirmative steps to obtain the stay. Moreover, he must make at least a prima facie showing that the claim involved is of a type dischargeable in bankruptcy.[7] In this connection, Sections 17 and 63 of the Bankruptcy Act become significant. Section 17 states that the discharge will act as a bar to all the bankrupt's *provable* debts, except certain ones expressly declared to be non-dischargeable, such as tax claims, fraudulently incurred obligations, alimony, wages earned by employees within 3 months of bankruptcy, liabilities arising from willful or malicious injury to the person or property of another, and debts not listed in the schedules, unless the claimant had actual knowledge of the proceedings. Section 63a enumerates the debts which are "provable." Generally speaking, contractual and quasi-contractual obligations—whether contingent or fixed, liquidated or unliquidated—and any judgment claims are provable, whereas non-judgment tort debts are not. An important exception is made, however, in the case of a cause of action for negligence; such a claim is provable, and therefore dischargeable, if the plaintiff's suit has been filed and is pending on the date of bankruptcy.

As a procedural matter, the bankrupt may seek the stay to which he is entitled under Section 11a either in the Bankruptcy Court or in the state court where the action is pending.[8] Theoretically, considerations of comity might make it the better course to apply first to th state court.[9] In practice, however, it is usually more expeditious to request the relief directly in the bankruptcy forum. Especially is this true where several state court actions are pending; the Bankruptcy Court can restrain them all with one order and upon one petition, whereas motions would otherwise be necessary in each suit if the state courts were asked to halt their own proceedings.

The Referee in Bankruptcy, as well as the District Judge, has

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[5]Section 11a is not applicable to *in rem* actions against the bankrupt's property. See 1 Collier on Bankruptcy, Par. 11.02, pp. 1140-1141.

[6]1 Collier on Bankruptcy, Par. 11.03, pp. 1141-1143.

[7]E.g., *Matter of Metz*, 6 F.2d. 962 (C.A. 2, 1925). While the Bankruptcy Court must pass upon the question of dischargeability in order to grant the stay under Section 11a, this determination will not be *res judicata* when the creditor presses his action in the state court after the discharge is entered. E.g., *Matter of De Lauro*, 1 F. Supp. 678 (D. Conn., 1932).

[8]1 Collier on Bankruptcy, Par. 11.08, p. 1156.

[9]See *Matter of Innis*, 140 F.2d 479 (C.A. 7, 1944).

the power to restrain the state court plaintiff under Section 11a. Usually, a stay order directed to that party and his attorney will be sufficient, for disobedience can be punished by the contempt power.[10] In the rare instances, however, where the state judge himself refuses to recognize the Referee's order, th bankrupt can apply to the Federal District Judge to whom the bankruptcy case is assigned for an order under Section 11a restraining the state court action.[11]

The practice by which the stay order is obtained from the Referee is quite simple and informal, although the pleading must be verified by the bankrupt.[12] Suggested forms of the petition and stay order are appended below. Frequently, the order will issue *ex parte*,[13] but certain Referees require that the matter be heard on an order to show cause with notice to the state court plaintiff. A form of the order to show cause for use in such instances is set forth below.

Section 11a, as has been noted, authorizes the stay until the question of the bankrupt's discharge has been decided. Once this time passes, the state court plaintiff is entitled as a matter of right to an order dissolving the stay.[14] And if he believes that this claim is non-dischargeable, he can, without awaiting the discharge, move immediately upon notice to the bankrupt for an order permitting the state court action to proceed.[15] Some Referees have permitted the stay order to be drafted in such a way as to remain in effect even after the discharge is granted, i.e., "until the question of the bankrupt's discharge is determined and until the further order of this Court." Where this practice is allowed, the state court suit is permanently halted unless the plaintiff affirmatively applies to the Baunkruptcy Court for leave to proceed. Since such a step seldom will be taken in the majority of cases involving claims clearly dischargeable, the bankrupt may be able to avoid ever pleading in the state action and thus may save a filing fee. The more technically proper procedure, however, is to set up the discharge by way of answer in the pending lawsuit, and a suggested form is appended below.

10Section 41 of the Bankruptcy Act prescribes the method by which a Referee in Bankruptcy can enforce his order through contempt proceedings. The facts are certified to the District Judge who then hears the matter and imposes whatever punishment appears appropriate.

11One of the few powers of a Bankruptcy Court which the Referee does not possess is the power to enjoin a state court, as distinguished from the parties to the state court action. Bankruptcy Act, Sec. 2a(15).

12Section 18c of the Bankruptcy Act requires any pleading which sets up matters of fact to be verified.

13See, e.g., *Matter of Kunsman*, 24 F.Supp. 583 (S.D.N.Y., 1938).

14*In re Rosenthal*, 108 Fed. 368 (S.D.N.Y., 1901).

15See *Matter of Levitan*, 224 Fed. 241 (D.N.J., 1915).

The Bankruptcy Court has no power under Section 11a to stay *in personam* actions against parties other than the bankrupt. Thus, if the bankrupt is only one of the defendants in the state suit, the stay order should not broadly restrain the plaintiff from going forward with the case; rather, it should merely stay him from "taking any further proceedings against the bankrupt." In this connection, it must be remembered that the order of discharge does not affect the liability of the bankrupt's spouse, or that of anyone who is a surety on his debts or otherwise a co-debtor with him.[16]

Section 11a, in express terms, applies only to cases pending against the bankrupt on the date the petition is filed. It does not afford relief for those situations where an action is filed after bankruptcy. Of course, if this occurs subsequent to entry of the discharge, there is no problem because the defense is already available. If the bankrupt is sued after bankruptcy and before the discharge is obtained, however, he may invoke the Bankruptcy Court's broad power under Section 2a(15) to "Make such orders [and] issue such process . . . in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this Act." This provision has been held to authorize stays of suits commenced after bankruptcy, thus filling the hiatus left by Section 11a.[17]

Once the stay order has been obtained, it should be served upon the state court plaintiff and his attorney. Service by mail will suffice since the purpose is only to give notice. An affidavit of service should be filed with the Bankruptcy Court to lay the foundation for contempt proceedings if the restraining order is violated. And a conformed copy of the order can be sent to the clerk of the state court where the stayed action is pending with the request that it be filed in that suit for informational purposes. Most of the clerks of the local state courts will file the Referee's stay order without requiring the bankrupt-defendant to enter an appearance, although some will not unless the filing fee is first paid.

A problem somewhat different from those discussed above involves the effect of bankruptcy upon an attachment, garnishment or similar lien existing against the debtor's assets. A stay of the action out of which the lien arose does not by itself remove the lien. If the property is non-exempt in bankruptcy, the Trustee will

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16Bankruptcy Act, Sec. 16.
17See 1 Collier on Bankruptcy, Par. 2.62, pp. 287-288.

take title to it,[18] and the bankrupt will care little about the lien. Section 67a of the Act enables the Trustee by summary procedure to invalidate liens obtained through judicial proceedings within 4 months of bankruptcy, if they arose while the bankrupt was insolvent. That section, moreover, has been held to grant the bankrupt the power to nullify liens under the same conditions, and this may be useful to him in the cases where a creditor has levied upon the exempt property which does not pass to the Trustee.[19] Of course, he may choose instead to follow the procedure prescribed by the state law for freeing exempt assets from an attempted levy.[20]

Conclusion

To assure full protection of the bankrupt's rights, his attorney should determine at the initial interview whether any actions are pending against the debtor. Sometimes the client may not know or may have lost the papers which would furnish the necessary details. A check of the register of actions at the local Superior and Municipal Courts will usually provide the required information. If suits are found to be pending, steps should be taken to stay them at the same time the bankruptcy petition is filed, or as soon thereafter as is possible. The attorney's job is not completed merely because the bankruptcy first meeting of creditors has gone off calendar. He should follow the matter closely until the discharge is granted, and then promptly plead that fact in the state court. Above all, the client has to be advised in simple language, preferrably with a confirming letter, that bankruptcy may not automatically end his problems, even as to his dischargeable debts; that in the event he is ever sued on one of these, he must not ignore the papers but

[18]The Trustee takes title to the non-exempt property under Section 70a of the Bankruptcy Act.
[19]*Chicago, Burlington & Quincy Railroad Co. v. Hall*, 229 U.S. 511 (1913).
[20]See, e.g., Code of Civil Procedure, Sec. 690.26.

should immediately contact counsel so that the benefits accorded him by the Bankruptcy Act will not be waived.

Suggested Forms

A. Petition to Stay State Court Action

IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

IN THE MATTER OF	) No. 123456-Y
	)
JOHN JONES,	) PETITION TO STAY STATE COURT ACTION
Bankrupt	)
	)

The petition of JOHN JONES respectfully represents and shows:

I.

Petitioner is the above named bankrupt.

II.

At the time of the filing of the voluntary Petition in Bankruptcy herein, there was pending against your petitioner in the Superior Court of the State of California, in and for the County of Los Angeles, an action entitled "ABC Collection Agency vs. Jones," being case number 24680.

III.

Said Superior Court action is based upon a claim for merchandise furnished to your petitioner; said claim is scheduled in these bankruptcy proceedings and is of a type dischargeable in bankruptcy.

IV.

Unless the said Superior Court action is stayed pending determination of your petitioner's right to a discharge in bankruptcy, petitioner will be deprived of benefits to which he is entitled under the Bankruptcy Act.

WHEREFORE, petitioner prays that this Court enter its order staying the above referred to Superior Court action pending determination of petitioner's right to a discharge in bankruptcy.

Dated: May 15, 1958.

_____
John Jones, Petitioner
(Verification)

_____
James Smith
Attorney for Petitioner

B. *Ex Parte Stay Order*

Order Staying State Court Action—
Caption as in Form A

AT LOS ANGELES, IN SAID DISTRICT, ON THE 15th DAY OF MAY, 1958.

Upon the verified petition of John Jones, the above named bankrupt, praying for a stay of a certain action pending against him, and good cause appearing therefor, it is

ORDERED, that ABC COLLECTION AGENCY, its attorneys, agents, servants and employees, be, and they hereby are, stayed from taking further proceedings of any kind against John Jones in that certain action now pending in the Superior Court of the State of California, in and for the County of Los Angeles, entitled "ABC Collection Agency v. Jones," and being case number 24680, until such time as this Court has determined the right of the said John Jones to a discharge in bankruptcy.

REFEREE IN BANKRUPTCY

C. *Order to Show Cause Why State Court Action Should Not Be Stayed.*

Order to Show Cause Upon Petition of
Bankrupt for Stay of State Court Action—
Caption as in Form A

AT LOS ANGELES, IN SAID DISTRICT, ON THE 15th DAY OF MAY, 1958.

Upon the verified petition of John Jones, the above named bankrupt, praying for a stay of a certain action pending against him, and good cause appearing therefor, it is

ORDERED, that on the 25th day of May, 1958, at 10:00 o'clock, A.M., before the undersigned Referee in Bankruptcy, in his courtroom, Room ....., Federal Building, Temple and Spring Streets, Los Angeles, California, ABC COLLECTION AGENCY show cause, if any it has, why an order should not be entered staying that certain Superior Court action referred to in the Petition of John Jones until the determination of the bankrupt's right to a discharge in bankruptcy, and why such further orders as may be appropriate should not be entered in the premises; and it is further

ORDERED, that pending hearing on this Order to Show Cause, ABC COLLECTION AGENCY, its attorneys, agents, servants, and employees, be, and they hereby are, stayed from taking further

proceedings of any kind against John Jones in that certain action now pending in the Superior Court of the State of California, in and for the County of Los Angeles, entitled "ABC Collection Agency v. Jones," and being case number 24680; and it is further

ORDERED, that if respondent ABC Collection Agency intends to contest or resist the Petition of John Jones to Stay State Court Action, it shall, pursuant to local Rule 203, file its verified written answer, objection or other responsive pleading thereto, and serve a copy of same upon James Smith, attorney for John Jones, at least two days prior to the hearing on this Order to Show Cause; and it is further

ORDERED, that service of this Order to Show Cause may be made by mailing a copy hereof and a copy of the Petition of John Jones to Stay State Court Action, forthwith, postage prepaid, to ABC Collection Agency, 123 Wilshire Boulevard, Los Angeles, California.

REFEREE IN BANKRUPTCY

D. *Answer Setting Up Discharge In Bankruptcy*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

ABC Collection Agency, Plaintiff,	)	No. 24680
vs.	)	
John Jones, Defendant.	)	ANSWER

COMES NOW the defendant and answers the complaint on file herein as follows:

I.

Admits the allegations of the said complaint (or denies such allegations as may be appropriate).

II.

On May 15, 1958, defendant was duly adjudicated a bankrupt under the Bankruptcy Act, upon a voluntary petition in bankruptcy filed on said date, by order of the United States District Court for the Southern District of California, Central Division, in case number 123456-Y. Thereafter, on June 30, 1958, the said Bankruptcy Court entered its order that defendant be discharged from all debts and claims provable against his estate, excepting only such debts as are by law excepted from the operation of a

discharge in bankruptcy. A copy of said order of discharge is attached hereto, marked Exhibit "A," and by reference made a part hereof as though set out in full herein.

III.

The claim upon which plaintiff's complaint is based was duly listed in the schedules filed in the said bankruptcy proceedings, and is a claim provable in the said bankruptcy proceedings and one as to which a discharge in bankruptcy is a release under the Bankruptcy Act.

WHEREFORE, defendant prays that plaintiff take nothing by its complaint, that same be dismissed with costs to defendant, and that defendant have such other and further relief as to the Court may seem proper in the premises.

_____

John Jones, Defendant

Issue Editor—Orville A. Armstrong

The Los Angeles Bar Association Plan of Life Insurance

By JOHN C. MORROW*

On May 13, 1958, the Association entered into an agreement with Northwestern National Life Insurance Company whereby the Company agreed to issue individual yearly renewable term life insurance policies to members of the Association under specified conditions. Officially launched on May 26th by President Crary's announcement to our members, the substantial number of applications for insurance already received forecasts a successful plan which should prove to be of great value to our members who have the foresight to take advantage of their privilege to apply for insurance under the plan.

The plan was adopted by the Board of Trustees after a thorough investigation and study by a special insurance committee and by the Trustees. Several proposals made by other life insurance companies were considered by the committee and by the Trustees before the Association's plan was adopted, it being the most favorable for our members.

Since the brochure recently mailed to all members of the Association includes rather complete information regarding policies to be issued under the plan, a complete statement of the terms of the policies and the conditions of issuance would be beyond the scope of this article. However, some of the more important features may be of interest at this time.

All active, sustaining and affiliated members of the Association in good standing are eligible for insurance. The insurance to be issued is not group insurance but rather individual yearly renewable term policies to age 70. Each eligible member may apply for and obtain a $10,000 policy, without evidence of insurability. The premium rates are very favorable and include double indemnity for accidental death and waiver of premium during disability. The premium rates are set forth in the insurance policies and are not subject to change after issuance. The insured member has an option of converting his term policy to various other types of policies issued by the Company, but may not be required to do so.

Further, each eligible member may apply for additional term

*Trustee of the Los Angeles Bar Association and Board member of its Insurance Committtee.

policies at the same low premium rates, in multiples of $5,000, for a total amount of not to exceed $40,000, by furnishing evidence of insurability under the Company's usual underwriting requirements.

The plan will become effective when the minimum enrollment requirement of at least 750 applications for $10,000 basic insurance has been met. The Association hopes to achieve this minimum number by July 1st and at this time the prospects appear to be good that we will so qualify. In any event, there is a limited period wherein members may obtain a basic policy without evidence of insurability, so all interested members should apply promptly and before this period elapses.

In the opinion of your Board of Trustees the life insurance afforded Association members under this plan is more favorable than they could possibly obtain individually or otherwise.

In Recognition of Service to Bar Association and Community

Arnold Quittner	**Ruth Dreyfus**
Elsie P. Manahan	**Paul Caruso**
Floyd H. Norris	**David Glickman**
Robert M. Ebiner	**Edward Foley**
Thomas J. Ludlow, Jr.	**Selma K. Ellner**
David L. Jacobsohn	**J. Geo. Ohanneson**
Joseph L. Graves	**Bruce G. McGregor**

The above named practicing lawyers have unselfishly given of their time and talents in May, to the end that indigent individuals accused of Federal crimes were counseled and represented by able attorneys. They have served the cause of Democratic justice and of upbuilding their profession.

Printed at the bottom of every communication to its members by the Los Angeles Bar Association are the moving words of Theodore Roosevelt, as follows:

"EVERY MAN OWES SOME OF HIS TIME TO THE UPBUILDING OF THE PROFESSION TO WHICH HE BELONGS."

This is not an idle admonition. It is a statement of meaningful significance especially appropos to all members of the legal profession.

If the reader desires to serve, he or she need only communicate this willingness to the Los Angeles Bar Association by completing and mailing the printed form below.

DAVID FREEMAN,
Solicitation Chairman,
Federal Courts Criminal
Indigent Defense Committee.

TO: LOS ANGELES BAR ASSOCIATION
510 South Spring Street
Los Angeles 13, California

_____,

whose address is_____
desires to serve on the panel of the Federal Courts Criminal Indigent Defense Committee during 1958. Please have the appropriate person contact me when my services are needed.

_____
Signature

_____
Telephone

TAX REMINDER

INVOLUNTARY CONVERSION AND THE REPLACEMENT OF PROPERTY HELD FOR INVESTMENT

By MYRL R. SCOTT*

Section 1033(a) of the 1954 Internal Revenue Code provides that if a taxpayer replaces involuntarily converted property with property which is similar or related in service or use to the property converted then no gain shall be recognized.

A question frequently arises as to what kind of property may be purchased with funds received as a result of an involuntary conversion of investment property. For example, suppose a client owns a piece of real property and in order to produce income he leases it to an oil company for the construction and operation of a service station. The property is thereafter condemned for public use and the proceeds of the condemnation are apportioned between the lessor and lessee. In what kind of property must the lessor invest his share of the proceeds in order to gain the benefits of Section 1033(a)?

The Commissioner of Internal Revenue, in Revenue Ruling 56-347, has taken the position that the replacement of involuntarily converted investment property with other investment property does not meet the requirement of replacing such property with property which is similar or related in service or use, unless the replacement property is almost identical to the converted property. The Commissioner's narrow interpretation has recently been affirmed by the Tax Court in *Steuart Bros., Inc. v. Commissioner,* 29 T.C. #41 (1957). Therein a company acquired and held real property for the production of income. The company planned to build warehouses on the property and lease them. Before construction was commenced, the property was condemned and the Company re-invested the proceeds in improved leased property consisting of an automobile salesroom, garage, service station and parking lot.

The Tax Court denied the company the advantages of a tax free exchange and stated that the acquired property, even though it was investment property, did not qualify because it was not similar or related in service or use to the condemned property.

Although the Tax Court states that it does not require exact

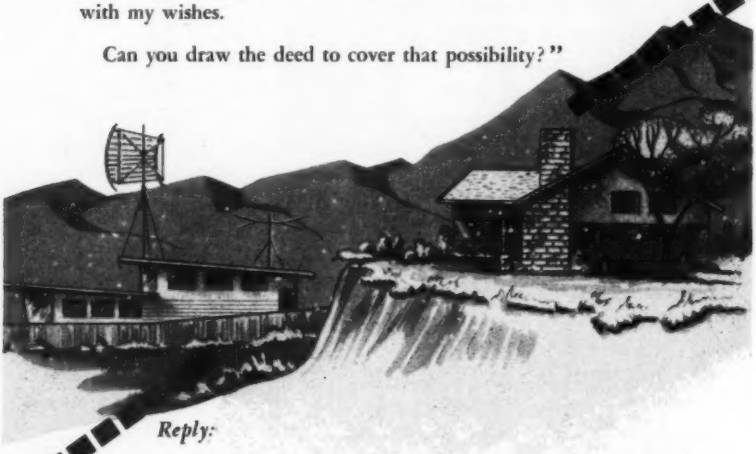
* Member of the Los Angeles Bar Association and the Committee on Taxation.

(Continued on page 253)

Seller to Escrow Officer:

"I am selling off the lower part of my lot and I want my deed to provide that when my buyer builds he can't obstruct my view with his house or with television antennas. What worries me is that he may sell and I want to be sure that the next owner will comply with my wishes.

Can you draw the deed to cover that possibility?"



Reply:

"We understand your problem, Mrs. Seller, and have talked about similar situations with our title officer. He informs us that to obtain the results you want, you will need more than a deed. This is a matter where you need the help and advice of your attorney. When you go to him, he will know that he can call on us for information as to descriptions and parties."

SECURITY TITLE INSURANCE COMPANY

HOME OFFICE and INTER-COUNTY DEPARTMENT

533 West Sixth Street • Los Angeles 14 • 'phone MAdison 7-6111

Brothers-In-Law

By George Harnagel, Jr.

George Harnagel, Jr.

"Almost the first thing a new judge learns on any court is that a lawyer's opening sentence, 'This is a simple case,' cannot be relied on as an absolute assurance of a short argument. A wise but weary judge in a trial court once began his opinion by remarking: 'This case bristles with simplicity. The facts are admitted; the law is plain; and yet it has taken seven days to try this case—one day longer than it took God Almighty to make the world.' "—Simon E. Sobeloff, United States Circuit Judge, Fourth Circuit.

* * *

Caveat Doctor

"As a result of the great increase in malpractice law suits, the doctor has come to regard his most devoted patients as potential litigants. He must be constantly on guard, and may withhold desperate measures to save life because of a possible law suit."—James A. Gannon, M.D., in *The Journal of the Bar Association of the District of Columbia.*

* * *

Read 'Em and Weep

In an article in the February 1958 number of *Illinois Bar Journal,* Crane C. Hauser of the **Chicago** Bar, predicts that recent developments concerning corporate income taxes will have a tragic effect on corporations. This dire forecast is based on three cases, all decided last year. They are: (1) *Coastal Storage Company v. Commissioner,* 242 Fed.(2d) 396; (2) *Lisbon Shops, Inc. v. Koehler,* 353 U.S. 382; and (3) *Pelton Steel Castings Company v. Commissioner,* 28 T.C. 153. They involve, respectively, the surtax exemption, net operating loss carry-overs, and the accumulated earnings tax.

The author adds the prophesy that these cases, "with appropriate administrative husbandry, will undoubtedly flourish to the point where Congressional restraint will be required."

Red Carpet treatment ...for your Client's small trust!

Now — with a new service from Bank of America — *for funds starting as low as $5,000* your client can establish a Small Trust for his wife, for the education of his children, parents, friends or for his favorite charity.

Under this new arrangement a Small Trust will receive all the *specialized service* and *benefits* previously restricted by operational costs to much larger trusts.

As one of its several investment services, Bank of America operates a Common Trust Fund. This enables a Small Trust to secure broad diversification in investments and more stability of income—advantages not usually available for trusts of limited size. Investment in this Common Trust Fund may be made if a Small Trust is created and used for true trust purposes.

Learn what an invaluable part a Small Trust can play in the management and disposition of your client's over-all estate! Our Trust Officers will be happy to furnish you with complete information.

Bank of America
NATIONAL TRUST AND SAVINGS ASSOCIATION
MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

"Barristers appearing in the appellate courts in England present their entire case orally and are not limited in their time as they usually are here. They read entire opinions to the members of the court. Members of the court at times suggest that a barrister curtail his reading of a case particularly well known to the court, but generally no interruption is made except by questions put to the barrister during argument by the court. . . .

"In this connection it is significant to note that the Court of Appeal in England hands down its decision from the bench immediately after the close of argument in most cases. . . ."—From an address on *Significant Differences Between English and American Practice* by Judge Charles E. Murphy, New York Supreme Court, Appellate Division.

* * *

Law Firms, Too, Are Big in Texas

The *Houston Chronicle* proudly reports:

"New York, where the nation's biggest law firms are housed, has only four that are bigger in size than the top two firms here.

"Vinson, Elkins, Weems & Searls, with 97 lawyers, and Baker, Botts, Andrews & Shepherd, also with 97, rank equally in size with the fifth and sixth largest New York firms.

"The totals were reported in the Martindale-Hubbell Law Directory as of Dec. 1957.

"Other big firms here, ranked in size, are Fulbright, Crooker, Freeman, Bates & Jaworski, with 70 lawyers; Butler, Binion, Rice & Cook, with 39, and Andrews, Kurth, Campbell & Bradley with 34."

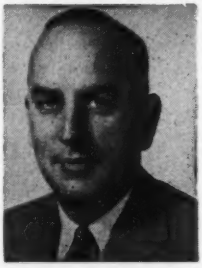
TAX REMINDER

(Continued from page 249)

duplication in re-investment, it nevertheless demands something more than a showing that both of the properties were investment properties, or that the properties were both held for the purpose of deriving operative profits, rental, or lease income. In order to comply with the Tax Court's test of "functional similarity," it appears that the only replacement immune from an attack by the Commissioner is an investment in property which is in fact a duplication of the converted property, or an investment in property which has been approved in a ruling by the Commissioner.

Silver Memories

Compiled from the World Almanac and the L.A. Daily Journal of May and June, 1933, by A. Stevens Halsted, Jr.



A. Stevens Halsted, Jr.

The State Legislature has fixed a new schedule of judicial salaries. The San Francisco County Superior Court Judges will hereafter receive $9,000 (instead of $10,000) per year. Governor **Rolph** vetoed a bill reducing the salary of Los Angeles judges from $10,000 to $8,000 on the ground that a reduction in judicial salaries of greater than 10% is not justified. The salaries of the Los Angeles Municipal Judges have been cut by the Legislature from $7,500 to $6,500.

* * *

Approximately $3,000,000 will be returned to Los Angeles gas consumers under a decision by the U. S. Supreme Court in a rate case. The rebate amounts to 9% on all gas bills since January 1, 1931. The original order of the State Railroad Commission, lowering the gas rate, was handed down in November, 1930, after investigation started by the Commission in 1929. The intervening time has been consumed in appeals through the Federal courts.

* * *

Ray L. Chesebro defeated **Erwin P. Werner** for Los Angeles City Attorney at the primary election held last month. Chesebro, who is 53 years old, was born in Minnesota and came to Los Angeles in 1904. He is commonly referred to as "Judge Chesebro," the appellation dating back to the eleven years he served as police judge here from 1911 to 1922.

* * *

For the third time in nine years California's electorate will go to the polls this month to decide whether pari-mutuel horse race betting should become legal in this State. Such a proposal was voted down by more than a 300,000 majority in 1926. It was

again defeated in 1932, but by the close margin of 52,000 votes. Governor **Rolph** vetoed a similar bill on moral grounds. In his famous "home against the stable" message to the legislature, he contended pari-mutuel betting would bring economic demoralization and moral degradation to thousands of California homes.

* * *

The Century of Progress Exposition, Chicago's second world's fair, was formally opened and dedicated by Postmaster General **James A. Farley.** A beam of light which started 40 years ago from the star Arcturus was caught up by astronomers and relayed to a delicate mechanism in the tower of the Hall of Science which, at a touch of a signal, released thousands of electric lights. The observatories at Yerkes, Illinois, Harvard and Allegheny had telescopes focused on Arcturus from which they "trapped" the star's ray by photo-electric cells, amplified them and relayed them to the master switch at the fair. * * *

President Roosevelt signed the **Federal Securities Act** designed to protect the investing public by means of publicity concerning stock issues. The U. S. House 283 to 57, passed the Administration's gold repeal, cancelling the gold clause in all Federal and private obligations, making them payable in legal tender. President **Roosevelt** also signed the Muscle Shoals-Tennessee Valley bill, thus ending a thirteen year controversy over the disposition of the government's $165,000,000 war-time power and munitions plant investment. * * *

By order of Secretary of the Interior **Ickes** the great dam on the Colorado River has been changed from "Hoover Dam" to "Boulder Dam." * * *

A naval court of inquiry of last April's crash of the U. S. Navy dirigible balloon Akron, biggest on earth, off Barnegat, N. J., showed that the commanding officer committed an error in judgment in not setting a course to keep out of severe storm conditions. Only 4 of 76 aboard were saved. Among those lost was Rear Admiral **William A. Moffett,** chief of the Navy Bureau of Aeronautics, who was a passenger.

* * *

Since the advent of legalized beer and wine on April 7, drunk driving in automobiles has fallen off approximately 60 per cent, according to statistics of the district attorney's office. Apparently less bootleg liquor is being consumed.